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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re D.G-S., a Person Coming
Under the Juvenile Court Law.

K.G.,

Petitioner,

v.

SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent,

CONTRA COSTA COUNTY
CHILDREN AND FAMILY
SERVICES BUREAU, ET AL.

Real Parties in Interest.

A167724

(Contra Costa County
Super. Ct. No.
J2200172)

In this juvenile dependency proceeding, K.G. (Mother) petitions for relief under California Rule of Court 8.452 from an order that terminated reunification services after a 12-month review and scheduled a hearing pursuant to Welfare and Institutions Code section 366.26.¹ Mother contends

¹ All statutory references hereafter are to the Welfare and Institutions Code.

services should have been continued and the section 366.26 hearing should not have been set. We disagree and deny the petition.

I. FACTS AND PROCEDURAL HISTORY

Mother and T.S. (Father) are the parents of the child, D.G.-S., who was born in 2013.

A. Petition, Detention, Jurisdiction, and Transfer

In January 2022, the Fresno County Department of Social Services (Fresno Agency) filed a juvenile dependency petition under section 300, alleging that Mother was unable to care for the child or make appropriate arrangements for his care while Mother was hospitalized for chronic medical issues. The petition also alleged that Father's whereabouts were unknown.

The Fresno Agency's detention report advised that Mother was hospitalized with serious heart and kidney issues and the child could no longer stay with her at the hospital because Mother tested positive for COVID-19. The child stated he was not attending school. The Fresno County Juvenile Court ordered the child detained and granted Mother weekly electronic and telephonic visits.

The Fresno Agency's jurisdiction/disposition report recommended out-of-home placement. The report detailed Mother's health struggles, her incidents of domestic violence with Father, and her moving into a shelter. The agency recommended family reunification services for Mother, including parenting education, a mental health assessment with treatment as recommended in the assessment, and a domestic violence assessment with treatment as recommended in that assessment.

The juvenile court assumed jurisdiction over the child in February 2022, struck the allegation that Father's whereabouts were unknown, and scheduled a disposition hearing.

In April 2022, the court granted a motion by the Fresno Agency to transfer the matter to Contra Costa County, where Mother had listed her residence, requested services, and claimed the availability of support.

B. Disposition

The Contra Costa County Juvenile Court accepted the transfer and scheduled a disposition hearing. Pending the hearing, the court granted Mother weekly one-hour visits to be supervised by the Contra Costa Children and Family Services Bureau (Bureau) or its designee.

The Bureau's disposition memorandum advised that the child was still in Fresno County, Mother had telephone contact, and the child was being moved to Contra Costa County, which would enable in-person visits. The Bureau asked the court to accept the disposition recommendations set forth in the Fresno Agency's jurisdiction/disposition report, including the previously described reunification services.

The disposition hearing was continued from May 19 to May 26, 2022, due to Mother's hospitalization. Father was found to be the presumed father. At the May 26 hearing, Mother appeared by phone; Father, who was incarcerated in San Joaquin, did not appear. The court accepted the Bureau's recommendations.

C. Six-Month Review

The Bureau's six-month status report recommended continued reunification services to Mother. Mother claimed she was in therapy, but the Bureau could not verify her enrollment because she had not signed a release. Mother also asserted she was trying to enroll in a parenting class. She had missed 12 of 22 visits with the child, and during two supervised visits, she was transported to the hospital due to medical emergencies. A school vice

principal observed that the child had been “pulling . . . away” from activities and expressing worry about Mother because of canceled visits.

At the review hearing in November 2022, the court continued services to Mother and modified visitation to a minimum of two hours, four times per month, with overnight visits upon notice to the child’s counsel. The 12-month review hearing was set for December 29, 2022, and was later continued by stipulation to January 19, 2023.

D. Twelve-Month Review

The Bureau’s report for the 12-month review recommended that the court terminate reunification services and set a section 366.26 hearing. Mother had “no called/no showed” for two visits with the child. She was unhappy with her living situation, and the social worker had provided her resources for finding alternative housing. The Bureau offered Mother “parent partner” services, but she declined. She claimed to be attending therapeutic sessions but refused to sign a release to permit verification by the Bureau. Her health problems persisted and she had no functional safety plan for the return of the child and no consistent support. Her lack of support was “due to her inability to manage her anger and accept responsibility for things within her control,” and people in her support network reported that she would “periodically push them away.” She blamed others for her misfortunes and actions. On the positive side, Mother completed a parenting group and provided a certificate of completion. The Bureau noted that Mother “loves [the child] and has positive interactions with him when they are together.” However, as the social worker observed, Mother lacked a clear understanding of what was required for true change and accountability, and her anger and mental health needed to be addressed on a deeper level than Mother was

willing to do. The social worker concluded: “The circumstances leading to child welfare involvement continue to exist for this family.”

The Bureau later submitted a memorandum stating that Mother had stopped talking to the social worker due to the Bureau’s recommendations. In January 2023, visits were moved to the Bureau because Mother failed to confirm them with the caregiver in advance.

On January 19, 2023, at Mother’s request, the matter was set for a contested 12-month review hearing on February 23, 2023. A memorandum from the Bureau stated that Mother's therapy sessions were inconsistent, she reported being hospitalized for pneumonia, and she was often late to visits with the child or canceled them.

The 12-month review hearing was continued again to April 27, 2023, because Mother was in the hospital. According to the Bureau’s memorandum, the plan for the child was adoption by the caregivers. Mother’s visits with the child and communication with the Bureau were inconsistent due to her illness and hospitalizations. In addition, the memorandum noted that the social worker met with Mother at her home in March 2023 and observed a hollow pen and white substance on the coffee table; Mother claimed it belonged to a support person. The caregiver also had concerns that the child hit his head on his desk at school when he became upset and poked his toes with pins to “ ‘make sure he can still feel.’ ” Mother’s medical issues continued, exacerbated by her poor diet and her failure to take her medication as prescribed.

The contested 12-month hearing was held on April 27, 2023. Mother was in the hospital but appeared via Zoom. There was no testimony, but Mother objected to the Bureau’s recommendations. Her attorney argued that Mother’s love for the child was evident, noting that the 12-month review

report indicated visits were joyful. Counsel further argued that Mother participated in a parenting group and therapy but health issues prevented her from taking custody.

The juvenile court adopted the Bureau's recommendations, found that it would be detrimental to return the child to Mother's care, found that reasonable reunification services were provided and there was not a substantial probability the child would be returned within the 18-month period, terminated reunification services, and set a section 366.26 hearing for August 17, 2023. The court prefaced its ruling by stating: "I do find that the issues here go beyond simply [Mother's] health concerns, which is what I want to make clear for the record. I am not just making—or following the recommendations because of that alone."

Mother filed a rule 8.452 writ petition challenging the juvenile court's order. We issued an order to show cause, and the Bureau filed an opposition to the petition.

II. DISCUSSION

On appeal, Mother contends the juvenile court erred in terminating services and setting a section 366.26 hearing. Based on our review for substantial evidence, we find this contention lacks merit. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995–996.)

If the child is not returned to a parent's custody at the 12-month review hearing, the juvenile court may do what it did here: order a section 366.26 hearing because there is clear and convincing evidence that reasonable services have been provided. (§ 366.21, subd. (g)(4).) Alternatively, as Mother urges, the court may continue the case for up to six months (but not beyond 18 months after removal) if there is "a substantial probability that the child will be returned to the physical custody of their parent or legal

guardian and safely maintained in the home within the extended period of time.” (§ 366.21, subd. (g)(1).) To find there is a substantial probability of return within the extended period, the court must find that the parent (1) “has consistently and regularly contacted and visited with the child,” (2) “has made significant progress in resolving problems that led to the child’s removal from the home,” and (3) “demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1).)

Substantial evidence supports the juvenile court’s conclusion that none of the required elements listed in section 366.21, subdivision (g) was established. First, Mother did not regularly contact and visit the child. By the time of the six-month review, she had missed 12 of 22 scheduled visits and, during the 12-month review period, her visits were still inconsistent. Second, Mother had not made significant progress in resolving the problems that led to the child’s removal. The child was removed because Mother could not provide for his care due to her hospitalization and had not adequately arranged for his care. At the time of the 12-month review, Mother’s health issues persisted and she still had not established a support network that would allow for care of the child. Third, Mother did not demonstrate the capacity and ability to complete her plan objectives and provide for the child. Although she finished a parenting class, she declined parenting assistance, did not show proof of mental health therapy, and had no support network.

Despite this, Mother argues that her “health admittedly continued to be a problem which prevented the child’s return at the twelve-month hearing, but [she] was able to participate in parenting and therapy. She continued to be under medical care so [] she was progressing as significantly as she could.”

She adds that “[e]lement number 3 [capacity and ability to meet plan objectives and provide for the child] could have been met . . . if her medical issues were either controlled or remedied. It was impossible to tell just how long her ailments would last.”

Mother’s arguments are unpersuasive. While we are sensitive to Mother’s health issues—as was the juvenile court, who made a point to say that the problems went beyond Mother’s health—Mother repeatedly rejected or did not avail herself of services offered to her. The social worker offered Mother financial assistance to help her get “Life Alert” for emergency medical assistance, but Mother did not follow through with the application. Mother was offered a parent partner to help manage her reunification case and her life, but she did not follow up and ultimately refused to utilize the partner. The social worker offered to help Mother find alternative housing, but she declined. The Bureau attempted to facilitate a support system for Mother and the child, including creating a relationship with the child’s foster mother, but Mother refused the foster mother’s offer of rides and support. Thus, there was no evidence to suggest that six more weeks of services (to the 18-month date) would have made any difference in her behavior or ability to care for the child.

Mother nonetheless argues that the juvenile court should have continued the hearing pursuant to section 352 and *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774. Her argument is unavailing.

Section 352 allows the juvenile court to continue a hearing “beyond the time limit within which the hearing is otherwise required to be held, provided that a continuance shall not be granted that is contrary to the interest of the minor.” (§ 352, subd. (a)(1).) “In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or

her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (§ 352, subd. (a)(1); see § 352, subd. (a)(2) [“Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.”].)

Section 352 was applied in *In re Elizabeth R.* There, the mother was hospitalized for all but five months of the reunification period. (*In re Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1777.) At the 18-month review hearing, the juvenile court terminated reunification services “despite evidence of the mother’s impeccable record of visitation and efforts to comply with the reunification plan,” because the court erroneously believed that it could not extend the reunification period. (*Id.* at pp. 1777–1778.) The appellate court reversed, concluding that “section 352 provides an emergency escape valve in those rare instances in which the juvenile court determines the best interests of the child would be served by a continuance of the 18-month review hearing.” (*Id.* at pp. 1798–1799.)

In re Elizabeth R. has no application here. The juvenile court in *In re Elizabeth R.* erred in believing it had no discretion to continue services beyond 18 months, and there is no indication the court in this case made the same mistake. Furthermore, the mother in *In re Elizabeth R.* had complied with her case plan when not hospitalized. By contrast, Mother’s failure to comply with her case plan was not simply due to her hospitalizations. Rather, it was due, in large part, to matters within her control, such as her refusal to accept services. As explained in the social worker’s assessment, Mother lacked a “clear understanding of what is required for true change and

accountability,” and her anger and mental health needs had “to be addressed on a deeper level” than Mother was willing to do.

Mother argues that the child was doing well in the foster home and there was no animosity between Mother and the foster parent, so there was no need to rush to a section 366.26 hearing. Mother overlooks subdivision (a)(2) of section 352—which states that continuances can be granted only for good cause “and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” Because there was no such evidence here, Mother fails to establish error.

III. DISPOSITION

The petition is denied. The request for a stay is denied as moot.

Chou, J.

We concur:

Simons, Acting P.J.

Burns, J.